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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTIANA SOLDANI

Appeal 2009-1288
Application 10/695,833
Technology Center 1700

Decided: [1] March 10, 2009

Before BRADLEY R. GARRIS, PETER F. KRATZ, and
MICHAEL P. COLAIANNI, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 3, 5, 6, and 8-12. We have jurisdiction pursuant to 35 U.S.C. § 6.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellant's claimed invention is directed to a method for making a glassy amorphous confectionary product comprising at least one acidic component and at least one sugar alcohol that is not a monosaccharide sugar alcohol. The method includes a starting material formation step, an evaporation step to form an intermediate material, and a cooling step. The intermediate material water content is below 3 percent. Claim 1 is illustrative and reproduced below:

1. A method for the manufacture of a glassy amorphous solid as a confectionery material, the glassy amorphous solid comprising at least one acidic component and at least one sugar alcohol which is not a monosaccharide sugar alcohol, the method comprising the steps of:

(i) forming a liquid starting material comprising water, the at least one acidic component, and the at least one sugar alcohol which is not a monosaccharide sugar alcohol;

(ii) evaporating water from the liquid starting material under conditions at which the acidic component does not cause significant hydrolysis of the sugar alcohol to dissolve the acidic component in the liquid and to remove at least part of the water to form an intermediate material, wherein the evaporating is carried out at a temperature that does not exceed 145°C; and

(iii) cooling the intermediate material to form a glassy amorphous solid that has improved transparency compared to a glassy amporphous solid in which the acidic component has been added after a cooling step, wherein the water content of the intermediate material is reduced to below 3%.

The Examiner relies on the following prior art references as evidence in rejecting the appealed claims:

Liebrand	3,738,845	Jun. 12, 1973
Aldrich	4,154,867	May 15, 1979
Rivier	EP 1 151 673 A2	Nov. 11, 2001

The Examiner maintains the following rejections:

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3, 5, 6, and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rivier. Claims 1, 3, 5, 6, and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aldrich or Liebrand in view of Rivier.

The claims subject to the last two mentioned rejections are argued together as a group. Accordingly, we select claim 1 as the representative claim on which we shall decide this appeal as to both obviousness grounds of rejection before us.

PRINCIPAL ISSUES

1. Has Appellant identified reversible error in the Examiner's rejection of claim 3 under the second paragraph of 35 U.S.C. § 112 by the argument that there is proper antecedent basis for "the cooking step" of claim 3 in referenced claim 1 for one of ordinary skill in the art to understand the scope of the subject matter embraced by dependent claim 3, when claim 3 is read in light of the Specification?

2. Has Appellant identified reversible error in the Examiner's obviousness rejection of the appealed claims over Rivier based on the argument and submitted copy of a Declaration[2] under 37 C.F. R. 1.132 of

[2] The submitted copy of the Declaration under 37 C.F.R. § 1.132 by Christiana Soldani (the named inventor) is incorrectly labeled as an Affidavit (App. Br.; Exhibit F).

named inventor, Christiana Soldani urging that Rivier fails to teach or suggest adding an acidic component to a liquid water-containing starting material and/or evaporating the water under conditions at which significant hydrolysis of the sugar alcohol is not caused by the added acidic component, as set forth in representative claim 1?

3. Has Appellant identified reversible error in the Examiner's obviousness rejection of the appealed claims over Aldrich or Liebrand in view of Rivier based on the argument that "Aldrich, Liebrand, and Rivier are all deficient with respect to the present claims . . . " and that, consequently, a combination of the applied references that would have led one of ordinary skill in the art to Appellant's claimed subject matter would not have been suggested (App. Br. 18-19)?

SUMMARY DECISION

We answer the aforementioned questions in the negative. Accordingly, we affirm the Examiner's rejections.

FACTUAL FINDINGS

The following findings of fact are supported by a preponderance of the evidence. Additional findings of fact, as necessary, may appear in other portions of this opinion.

1. Appellant acknowledges that "[h]ard candy is generally made by a process in which a mixture of the sugar or sugar alcohol and water is heated, generally under vacuum, at a temperature of about 130-150°C" (Spec. 1).

2. Rivier discloses forming boiled candy casings from "an aqueous mixture of saccharides and/or polyhydric alcohols," which mixture "is

boiled in suitable proportions in a cooker at a temperature of 130-150°C, preferably under vacuum conditions, to reach a high final solids content of less than 2.5 %, preferably of about 1 %" (¶ 0059).

3. Rivier teaches that "[h]eat resistant functional ingredients may be added at this stage" of cooking (*id.*).

4. Rivier discloses that the casing composition can include additives, such as acids, in conventional amounts (¶ 0052).

5. Rivier discloses that the casing is made using polyalcohol "preferably selected from the group consisting of isomalt, sorbitol, maltitol, lactitol, mannitol, polydextrose, and combinations thereof" (*id.*).

6. Rivier furnishes several Examples wherein a cooking temperature of 155°C is employed and the acid is added after cooking at that temperature which is higher than the previously noted and described cooking temperature range of 130-150°C otherwise taught by Rivier (¶ 0073; Examples 1 and 2; ¶ 0059).

7. The Examples presented by Rivier are described as being "[n]on-limiting examples" (Rivier; ¶ 0072).

8. Appellant acknowledges that Liebrand (U.S. Patent No. 3,738,845) teaches "a process for the preparation of clear sorbitol hard candies confections which prevents the crystallization of sorbitol by addition of an organic acid, prior to the completion of the cooking step, which is carried out to a temperature of at least 300°F (about 149°C)" (Spec. 2).

9. Liebrand discloses that acid can be added prior to heating or at any point during the cooking process (col. 1, l. 59- col. 2, l. 6).

10. Liebrand discloses that "[u]pon cooling, the resulting candies are crystal clear and free from the objectionable opacity or cloudiness usually encountered" (col. 2, ll. 6-8).

11. Liebrand employs a vacuum during the cooking process and reduces the candy moisture content to less than 5 % (col. 1, ll. 50-58).

12. Liebrand teaches that preparing hard sorbitol candies according to the described method prevents sorbitol crystallization via addition of organic acid, such as citric acid (col. 1, ll. 40-45).

13. Aldrich discloses a process for making hard candy wherein acid and sugar alcohol, such as sorbitol, xylitol, mannitol, maltitol and combinations thereof, are employed in combination with an acid flavor (col. 1, ll. 45-59).

14. Aldrich teaches that candy made with malic acid has a preferable taste to candy made with citric acid (col. 2, ll. 58-65).

15. Aldrich discloses using a vacuum prior to cooling the candy mixture (col. 2, ll. 50-58).

16. Appellant provides an example (Example 1) of a product said to be according to the invention (Spec. 7-8). In this Example, the product is described as being made using 50kg of water, 25 kg of a specified maltitol syrup, 125 kg of a specified Isomalt. The batch is mixed and heated to a temperature of 80°C. Then, 1 kg of a specified citric acid, 1.4 kg of a specified malic acid, and 0.2 kg of Acesulfame K are added for forming the casing premix of the confection. The casing premix is subjected to heating progressively in two evaporators in series up to a temperature of 138°C, subjected to vacuum flashing, then cooling, and is subsequently filled with a specified filling, all in a specified manner.

17. Appellant provides an example (Example 2) of a product, which is said to have been made as a comparison example, from substantially the same ingredients as used in Example 1 (Spec. 8). However, the acid addition occurs after the steps of subjecting a casing batch mix to several heating steps, including a heating step above 145 °C (cooking) in an evaporator, a vacuum application step, and a discharge on a cooling table step. Subsequently, the casing is filled with a specified filling.

18. Appellant provides an Example 3 specifying how light transmission properties for an average of six samples of outer casings of products made according to Examples 1 and 2 are determined with an analysis model (Spec. 8-11). The results, including standard errors, are determined for each of the samples and presented in Table 1 as an average for samples made in accordance with each Example at a number of wavelengths, and with a plot provided in drawing Figure 3 (Spec. 8-11; Fig. 3).

19. Table 1 of the Specification reports that the six samples of product casings made in accordance with Example 1 demonstrated an average transmission of: (a) 48.43 percent at 450 nm wavelength, (b) 51.90 percent at 550 nm wavelength, and (c) 53.07 percent at 650 nm wavelength with respective standard errors of 0.85, 0.89, and 0.94 percent (Spec. 11). The six samples of product casings made in accordance with comparison Example 2 demonstrate an average transmission of: (d) 45.70 percent prepared at 450 nm wavelength, (e) 48.85 percent at 550 nm wavelength, and (f) 50.32 percent at 650 nm wavelength with respective standard errors of 2.11, 2.02, and 1.94 percent. (*Id.*).

20. Rivier provides Examples 1 and 2 wherein a confection product casing recipe includes 80 kg isomalt, 10 kg maltitol syrup and 10 kg water that is heated under 60 percent vacuum until reaching a cooking temperature of 155 °C (¶¶ 0074 and 0077). The resulting cooked mass is flavored, colored, acidified and cooled down to 70 °C and a batch roller is charged therewith and the mass is then subjected to a filling process (Rivier, ¶¶ 0074-0077).

21. The Declaration under 37 C.F.R. § 1.132 by Christiana Soldani does not present any additional experimental evidence to that presented in the subject Specification (App. Br., Exhibit F).[3]

22. Christiana Soldani states, *inter alia*, in the Declaration under 37 C.F.R. § 1.132 that:

> 5. As summarized in the Examples and Figures of the present disclosure, the addition of acidic components of a hard candy at the beginning of the manufacturing process, including the cooking stage, results in a hard candy having a greater transmission than a hard candy produced by a process wherein the acidic components are added during the cooling stage that follows cooking. More specifically, Figure 3 and Table 1 of the present specification illustrate the surprisingly high transmission that is achieved when the acidic components of Example 1 was added during the cooking stage, as opposed to the process of Example 2 wherein the acidic components are added during a subsequent cooling stage. Therefore, although Examples 1 and 2 comprise hard candies having similar ingredients, a surprisingly high transmission is achieved by the addition of the acidic components of a hard candy at the beginning of the manufacturing process.

[3] The Declarant refers to Rivier (EP 1 151 673 A2) as Rivier II.

. . .

8. *RivierII* fails to disclose or suggest a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, at no place in the disclosure does *Rivier II* even recognize any glassy amorphous solid having a specific transmission, let alone the improved transmission of the glassy amorphous solid as described herein above.

9. *Rivier II* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking. Specifically, *Rivier II* teaches that a mixture of 80 Kg of isomalt F, 10 Kg of maltitol syrup and 10 Kg of water is cooked under 60% vacuum until reaching a cooking temperature of 155°C. Subsequently, the resulting cooked mass is flavoured, coloured and acidified and cooled down at 70°C. This process will not result in a glassy amorphous solid having an improved transparency as evidenced by a transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. In fact, because *Rivier II* teaches a conventional process for producing confectionery products wherein acidic components are added after cooking, the resulting transmission will be less than the presently claimed transmission of at least 47.8% at 450 nm; and/or at least 50.9% at 550 nm; and/or at least 52.3% at 650 nm. Because *Rivier II* teaches that the acidic component is added after cooking and because *Rivier II* does not disclose improved transmission properties, *Rivier II* cannot teach the improved transmission properties of the confectionery product discussed herein above or disclosed in the present application.

(App. Br., Exhibit F)

PRINCIPLES OF LAW

On appeal to this Board, Appellant must show that the Examiner erred in rejecting the claims. *Cf. In re Kahn*, 441 F.3d 977, 985-986 (Fed. Cir. 2006); *see also* 37 C.F.R. § 41.37(c)(1)(vii).

35 U.S.C. § 112, second paragraph, provides that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." A claim is considered indefinite if it does not reasonably apprise those skilled in the art of its scope. *Amgen, Inc. v. Chugai Pharm. Co.*, Ltd., 927 F.2d 1200, 1217 (Fed. Cir. 1991); *see also, In re Venezia*, 530 F.2d 956, 958 (CCPA 1976) (relevant inquiry under § 112, second paragraph, is whether the claims delineate to a skilled artisan the bounds of the invention).

In proceedings before it, the Patent and Trademark Office (PTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

However, *see, e.g., Ex parte Miyazaki*, 89 USPQ2d 1207, 1211-1212 (BPAI 2008) ("The USPTO is justified in using a lower threshold showing of ambiguity to support a finding of indefiniteness under 35 U.S.C. § 112, second paragraph, because the applicant has an opportunity and a duty to amend the claims during prosecution to more clearly and precisely define the metes and bounds of the claimed invention and to more clearly and precisely

put the public on notice of the scope of the patent."). In *Miyazaki*, an expanded panel of the Board went on to state:

> The Federal Circuit has, however, noted that a different standard for indefiniteness may be appropriate during prosecution of patent claims. *See Exxon Research and Engineering Co. v. U.S.*, 265 F.3d 1371, 1384 (Fed. Cir. 2001) ("If this case were before an examiner, the examiner might well be justified in demanding that the applicant more clearly define UL, and thereby remove any degree of ambiguity. However, we are faced with an issued patent that enjoys a presumption of validity.") Accordingly, we adopt this lower threshold standard of ambiguity for indefiniteness for claims during prosecution in keeping with the USPTO's broadest reasonable interpretation standard for claim construction.

Id. at 1212.

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In this regard, "analysis [of whether the subject matter of a claim is obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S.Ct. at 1741.

In re Gurley, 27 F.3d 551, 552-53 (Fed. Cir. 1994), holds that "[a] reference may be said to teach away when a person of ordinary skill, upon

reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant."

Moreover, it is well settled that when the prior art discloses a range that overlaps or touches on a claimed range, the claimed range is rendered prima facie obvious. *See In re Harris*, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005); *In re Peterson*, 315 F.3d 1325, 1330 (Fed. Cir. 2003); *In re Geisler,* 116 F.3d 1465, 1468-69 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1577-78 (Fed. Cir. 1990); *In re Malagari*, 499 F.2d 1297, 1302-03 (CCPA 1974).

ANALYSIS

Rejection under 35 U.S.C. § 112, second paragraph

Appellant maintains that "[s]ince Claim 1 recites, in part, "a cooking step" and Claim 3, which is dependent on Claim 1, recites, in part, "the cooking step," Appellants respectfully submit that there is proper antecedent basis for "the cooking step" in Claim 3" (App. Br. 10-11).

Rejected dependent claim 3 requires a method according to claim 1, which method "further comprises applying a vacuum to an evaporator during the cooking step . . . . "

The Examiner correctly notes, however, that the "a cooking step" of claim 1 is part of a recitation describing a comparison glassy amorphous solid based on a manner of preparation thereof ("acidic component has been added after a cooking step") rather than a part of the method of preparing a glassy amorphous solid in accordance with claim 1 (Ans. 4). In the method of claim 1, an acid component is added to a liquid starting material prior to

evaporating water therefrom without mentioning a cooking step (cl. 1, steps i and ii).

As presently recited, "the cooking step" limitation of claim 3 does not have a reasonable explicit antecedent basis in claim 1 that renders the claim 3 restriction to the claim 1 method reasonably definite. If the "a cooking step" of the comparison product described in step iii of claim 1 is used as an antecedent for the claim 3 recitation, as Appellant argues, it is not clear how claim 3 would further limit the scope of the claim 1 method to include applying a vacuum to an evaporator, as recited therein.

The evaporation step ii of claim 1 provides that water is removed from the liquid starting material containing at least one acid component. When step ii is read in light of the Specification, this step could be interpreted to imply "a cooking step" (Spec. 3, ll. 13-22; 5, l. 28 -6, l. 2) that would be consistent with the claim 3 recitation. However, this latter claim interpretation option for an implicit antecedent basis for "the cooking step" of claim 3 being provided in step ii of claim 1 would present an inconsistency with Appellant's arguments and with the otherwise expressly provided for "a cooking step" of a comparison product as recited in claim 1 (cl. 1, step iii).

On this record, the Examiner has presented a prima facie case as to how pending claim 3 runs afoul of the definiteness requirements of the second paragraph of 35 U.S.C. § 112. Appellant's argument appears to bolster rather than overcome the Examiner's basis for this rejection.

Rejections under 35 U.S.C. § 103

Concerning the Examiner's obviousness rejection over Rivier, it is manifest that Rivier does not limit the disclosed method to the exemplified embodiments (FF 2-7). In this regard, Rivier provides for introducing an acid component into a hard candy composition and evaporating water during cooking at temperatures (130-150°C) that encompass or overlap the claimed evaporation temperature range of less than or equal to 145°C, as specified in representative claim 1 (FF 2-5). Moreover, Rivier employs a vacuum during the evaporation of water and a cooling step (FF 2). Appellant acknowledges that such processing conditions for making hard candy are conventional (FF 1).

While Rivier may not expressly describe adding an acidic component of the candy composition to the liquid starting material prior to evaporation of water (cooking), Rivier clearly teaches that an acid component can be added to the candy composition without limiting the manner or timing of the acid addition (FF 4). Furthermore, Rivier teaches or suggests that heat resistant functional additives can be added at the cooking stage (FF 3).

On this record, it is readily apparent that one of ordinary skill in the art would have readily determined suitable options in the sequence of steps in making Rivier's candy casing wherein the disclosed acid addition taught by Rivier could take place, including at a point during the formulation of the aqueous mixture and prior to evaporating water from the candy casing aqueous mixture (FF 1-4). This is particularly true here given that there are only several steps required in making the candy casing of Rivier, that is, slurry preparation (aqueous mixture formulation), cooking (heating and evaporation), and cooling, at which the acid addition can take place.

Consequently, we agree with the Examiner's conclusion that the claimed process, including the evaporation temperature and the acid component addition during the slurry (liquid starting material) formation stage, would have been a readily recognized option that would have been obvious to one of ordinary skill in the art (Ans. 3 and 4).

As for the argued absence of significant hydrolysis of sugar alcohol during the evaporation (cooking) step and the asserted improved product transparency, the Rivier process would be reasonably expected to be attended by substantially the same results obtained by Appellant given the commonalities between the materials and processing conditions disclosed by Rivier and the claim 1 requirements (FF 1-7: cl. 1).

Moreover, we recognize that Appellant's proffered evidence shows that a somewhat lower average light transmission occurred at 450 nm, 550 nm, and 650 nm wavelengths for the Comparison Example 2, wherein acids were added after cooking, as compared to the alleged inventive Example 1 (FF16-18). In Specification Example 1, several acid components were added at the beginning of several heating/cooking stages (FF 16).

However, neither the Specification nor the Christiana Soldani Declaration under 37 C.F.R. § 1.132 specifically addresses, much less adequately explains, how comparing light transmission results from a single Example according to the claimed invention with those from the comparative Example demonstrates unexpected results, much less unexpected results coextensive in scope with the claimed process. In this regard, Appellant refers to the Specification results as improved, not unexpected (App. Br. 14). Nor has Appellant adequately demonstrated how the single comparative exemplified product made according to the

Specification Example 2 recipe and method would accurately and necessarily reflect the relevant light transmission properties for the method taught by the applied reference. This is because Rivier discloses a confectionary product recipe (including ingredients and method) that is not identical to the Specification comparison Example 2 recipe. This is important given that Appellant has reported standard errors associated with the Specification Example 2 light transmission values of about two percent (Specification Table 1).

Accordingly, the arguments set forth in the Appeal Brief and Reply Brief, to the extent they are premised on the Specification Evidence and Soldani Declaration as establishing an unobvious product difference for the claimed method based on the evidence furnished, are not persuasive.

Concerning the Examiner's second obviousness rejection of the appealed claims based on the combined teachings of Rivier with either of Aldrich or Liebrand, we note that as we have found the teachings of Rivier sufficient to render the representative claim 1subject matter obvious to one of ordinary skill in the art for reasons set forth above, we likewise determine that the teachings of Aldrich or Liebrand in combination with Rivier would have led one of ordinary skill in the art to subject matter embraced by representative claim 1.

Appellant's arguments regarding the selection of citric acid are not persuasive because representative claim 1 does not require use of citric acid (App. Br. 17; cl. 1). Furthermore, both Aldrich and Liebrand disclose citric acid addition to a hard candy, as a known option (FF12-14).

While we recognize that Liebrand employs sorbitol and a somewhat higher cooking (evaporation) temperature of at least 300°F (about 149°C)

than the claimed temperature of 145°C or less, we agree with the Examiner that the addition of a non-monosaccharide sugar alcohol and the use of a lower evaporation (cooking) temperature, such as taught by Rivier, for use in the candy of Liebrand would have been an option well within the skill of the artisan based on the combined teachings of the references (Ans. 4-5; FF 1, 2, 5, 8-12). We observe that Liebrand teaches that acid component addition prior to cooking (evaporation) may be beneficial with respect to product candy transparency when employing sorbitol (FF 8-12).

Appellant's contention that each of the applied references is individually deficient is not persuasive of error in the Examiner's second obviousness rejection (App. Br. 18). In this regard, one of ordinary skill, in the art would have been expected to arrive at the claimed process upon routine experimentation when using known non-monosaccharide sugar alcohol alternatives in place of or in addition to the sorbitol (sugar alcohol) of Liebrand in the manufacture of hard candy based on the combined teachings of the references.

CONCLUSIONS

Appellant has not identified reversible error in the Examiner's rejection of claim 3 under the second paragraph of 35 U.S.C. § 112 by the argument that there is proper antecedent basis for "the cooking step" of claim 3 in referenced claim 1 sufficient for one of ordinary skill in the art to understand the scope of the subject matter embraced by claim 3, when dependent claim 3 is read in light of the Specification.

Appellant has not identified reversible error in the Examiner's obviousness rejection of the appealed claims over Rivier based on the

argument and submitted copy of a Declaration under 37 C.F. R. 1.132 of named inventor, Christiana Soldani urging that Rivier fails to teach or suggest adding an acidic component to a liquid water-containing starting material and evaporating the water under conditions at which significant hydrolysis of the sugar alcohol is not caused by the added acidic component, as set forth in representative claim 1.

Appellant has not identified reversible error in the Examiner's obviousness rejection of the appealed claims over Aldrich or Liebrand in view of Rivier based on the argument that "Aldrich, Liebrand, and Rivier are all deficient with respect to the present claims . . . " and that, consequently, a combination of the applied references that would have led one of ordinary kill in the art to Appellant's claimed subject matter would not have been suggested (App. Br. 18-19).

ORDER

The decision of the Examiner to reject claim 3 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as invention; to reject claims 1, 3, 5, 6, and 8-12 under 35 U.S.C. § 103(a) as being unpatentable over Rivier; and to reject claims 1, 3, 5, 6, and 8-12 under 35 U.S.C. § 103(a) as being unpatentable over Aldrich or Liebrand in view of Rivier is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

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